

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
The Town of Steilacoom, Washington) File No. SAT-WVZ-19991228-00126
Petition for Waiver of 47 C.F.R. § 25.104(b)(1))
Regarding Preemption of Local Zoning Regulation)
of Satellite Earth Stations)

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 2000

Released: September 25, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we grant the Town of Steilacoom, Washington ("Steilacoom") a waiver of the Commission's rule preempting certain local zoning restrictions on satellite earth stations antennas located in commercial areas. Steilacoom sought a waiver to enable it to enforce its regulations affecting satellite earth station antennas located in the Town's Historic District. We find that a waiver is warranted here. Steilacoom has identified its concerns as highly specialized: the local government's interest in preserving a genuine historic district. In addition, we find that the town's Municipal Codes are reasonable. The Municipal Codes have a clearly defined objective and do not unnecessarily burden federal interests or adversely affect competition among communications service providers.

II. BACKGROUND

A. Steilacoom's Request

2. Steilacoom requests "a full waiver [of 47 C.F.R. § 25.104(b)(1)] from the Commission that would permit the town to maintain and enforce regulations that affect satellite earth station antennas that are two meters or less in diameter and located or proposed to be located in areas where commercial uses are generally permitted in the town's Historic District." This waiver will allow enforcement of the Steilacoom Communications Facility Siting Standards. Steilacoom's request is unopposed.

1 47 C.F.R. § 25.104(b)(1) and (e)

2 47 C.F.R. § 25.104(a).

3 The Town of Steilacoom, Washington Petition for Waiver of 47 C.F.R. § 25.104(b)(1), ("Steilacoom Petition") at 13, filed December 17, 1999.

4 Steilacoom Municipal Code ("SMC"), Chapter 18.22.

B. Preemption Authority

3. The Communications Act of 1934 mandates that the Commission ensure access by U.S. consumers to “a rapid, efficient, nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges.”⁵ Where local regulations are found to pose undue obstacles to such access, the Commission is required by the Communications Act to protect this important federal interest.⁶ Section 207 of the Telecommunications Act of 1996 directs the Commission to preempt non-federal restrictions on certain direct-to-home video services, including Direct Broadcast Satellite service.⁷ “[T]he Commission shall ... promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.”⁸

4. At the same time, the Commission has long recognized that state and local governments have a legitimate and important interest in managing land use in their communities. The Commission has two rules that govern the installation and use of satellite antennas as well as specify when local zoning ordinances are preempted by federal rules. Section 25.104 governs restrictions on the installation, maintenance and use of satellite earth station antennas greater than one meter in diameter.⁹ Section 1.4000 governs over the air reception devices (“OTARD”), including satellite antennas one meter or less in diameter.¹⁰ These rules seek to balance local and federal concerns.

C. The Waiver Standard

5. In order to further the federal interests of competition and access to communications facilities without interfering with local interests, Section 25.104(a) preempts local zoning restrictions that limit transmission or reception by satellite earth station antennas unless the local authority can show that its regulation is reasonable. For purposes of this rule, the Commission has a two-pronged standard for reasonableness. The local regulation must (1) clearly define a health, safety, or aesthetic objective that is stated in the text of the regulation itself and; (2) must further this objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition.¹¹

⁵ 47 U.S.C. § 151.

⁶ 47 U.S.C. § 151.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, Title II, § 207, 110 Stat. 56112 (1996).

⁸ See also Preemption of Local Zoning Regulation of Satellite Earth Stations, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 5809 (1996) (“*Preemption Order*”).

⁹ 47 C.F.R. § 25.104.

¹⁰ The OTARD rule also applies to television broadcast antennas and multipoint distribution service antennas. For a full discussion of the OTARD rule, see Preemption of Local Zoning Regulation of Satellite Earth Station Antennas and Implementation of Over-the-Air Reception Devices, *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 19276 (1996) (“*OTARD*”). In the *OTARD* Order the Commission also adopted 47 C.F.R. § 25.104(f) to address direct broadcast satellite service antennas covered by regulations in 47 C.F.R. § 1.4000.

¹¹ 47 C.F.R. § 25.104(a).

Section 25.104(b) presumes that any state or local regulation is unreasonable if it restricts the use of satellite antennas of two meters or less in diameter and that is located in any area where commercial or industrial uses are generally permitted by non-federal land-use regulation.¹² The rule, however, permits state and local authorities to enforce otherwise preempted zoning ordinances if they receive a waiver from the Commission.¹³ The rule also provides that local authorities may enforce otherwise preempted zoning ordinances upon receiving a full or partial waiver from the Commission.¹⁴ Waivers may be granted upon a showing that “local concerns of a highly specialized or unusual nature create a necessity for regulation inconsistent” with the rule.¹⁵ Applicants must also set forth the specific non-federal regulation for which the waiver is sought.¹⁶

6. In 1996 the Commission adopted Section 25.104(f), as part of “OTARD,” which applies to restrictions on satellite antennas one meter or smaller in diameter.¹⁷ The OTARD rule prohibits local restrictions that impair installation, maintenance or use of such satellite antennas. The rule, however, exempts restrictions necessary to ensure safety or to preserve historic districts.¹⁸ Specifically, it provides that restrictions that impair installation, maintenance or use of antennas covered by the rule may be permissible if they are “necessary to preserve a prehistoric or historic district, site, building [or] structure ... and impose no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas.”¹⁹ These restrictions also must be no more burdensome than necessary to achieve the preservation objective.²⁰

III. DISCUSSION

7. Steilacoom requests a waiver of 47 C.F.R. §25.104(b)(1) to enforce its regulations and standards affecting satellite earth station antennas that are two meters or less in diameter and are, or will be located, in the town’s Historic District. Steilacoom states that it established regulations and standards for the following purpose:

[T]o protect the public health, safety, welfare and Steilacoom’s historic district and [to] minimize visual impacts of communication facilities by

¹² 47 C.F.R. § 25.104(b)(1).

¹³ 47 C.F.R. § 25.104(e).

¹⁴ 47 C.F.R. § 25.104(e).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 25.104(f) and § 1.4000.

¹⁸ *OTARD*, 11 FCC Rcd at 19320-21.

¹⁹ 47 C.F.R. § 1.4000(b)(2).

²⁰ 47 C.F.R. § 1.4000(b)(3).

establishing locations, site development and facility standards and permit requirements while furthering the development of over-the-air video programming services and wireless communication services to residences, businesses, public facilities and commuters within Steilacoom town limits.²¹

The relevant restrictions and guidelines provide that

(1) parabolic antennas should not be visible to the public; (2) parabolic television antennas: (a) shall not be mounted on the roof of the principal or accessory structure(s), (b) shall not cause the modification of window or door openings and associated trim to accommodate mounting, (c) should be mounted on the lower half of the structure; (3) parabolic antennas greater-than eighteen inches in diameter: (a) shall not be visible to the public, (b) shall not be permitted without written approval by the Preservation and Review Board, (c) parabolic antennas and the means to screen the antennas shall not destroy materials that characterize the property. The new work shall be compatible with the massing, size, scale, and architectural features to protect the integrity of the property and its environment.²²

8. In support of its waiver request, Steilacoom states that the Town was originally a seaport founded in 1851 and was the focal point of trade, transportation and government. In 1854, Steilacoom became the first incorporated municipality in the newly formed Washington Territory, later becoming the first county seat for Pierce County.²³ Steilacoom registered its central portion (“Historic District”) in the National Register of Historic Places on November 24, 1975.²⁴ The Historic District comprises a mix of residential and commercial properties, all of which contribute to the aesthetics and values Steilacoom has deemed worthy of preservation.²⁵

9. The resources that Steilacoom considers as contributing to the Historic District consist of a variety of building styles and cover a long period of history. This period ranges from 1792 when Roger

²¹ *SMC*, Communications Facility Siting Standards, Section 18.22.010.

²² *SMC*, Section 18.22.090.

²³ *Steilacoom Petition*, at 2.

²⁴ Mr. Paul Lusignan, Historian, National Register of Historic Places, National Park Service, electronic correspondence to Dennis Rensel, FCC, dated June 19, 2000.

²⁵ *Steilacoom Petition*, at 1. Steilacoom further states that it created the Historic District to “preserve and protect, enhance and perpetuate those elements of the district’s cultural, social, economic, architectural and historic heritage; to foster community and civic pride in the significance and accomplishments of the past; to stabilize or improve the historic authenticity, economic vitality and aesthetic value of the district; to fulfill the obligation of the local government by promoting the public health, safety and welfare by protecting and enhancing property; and to protect, preserve and enhance historic, social, cultural, environmental, aesthetic and natural values to which the desirable quality and unique character of Steilacoom are attributable.” *SMC*, Section 2.14.010.

Puget arrived with the first European tour of Puget Sound to the days immediately following World War II. The Historic District recognizes more than just the buildings. It also recognizes archeological sites of the Steilacoom Tribe, actual geography of the area, the city plat (blocks and alleys), and depression era artifacts and post-war impacts.²⁶

10. We grant Steilacoom's requested waiver of Section 25.104(b)(1). The Commission has long recognized that there are important local and federal interests in preserving historical and cultural sites to ensure that state and local governments will maintain and enrich their social, aesthetic, and educational benefits for future generations of Americans.²⁷

11. In specifying that "local concerns of a highly specialized or unusual nature" may justify a waiver, the Commission cited "genuine historic districts, waterfront property, or environmentally sensitive areas" as examples of appropriate local concerns.²⁸ Steilacoom identified its historic district as an important local concern, and demonstrated that its Municipal Code will be enforced to protect a genuine historic district. The area affected is limited to the town's designated Historic District and the town's codes and Preservation and Review Board guidelines appear to further the local government's specialized interest in preserving this Historic District. Furthermore, the town's regulations do not ban satellite earth station antennas, but merely provide guidelines to make earth stations more compatible with the historic character of the area.

12. In addition, we find that Steilacoom's ordinances are reasonable under Section 25. 104(a). Steilacoom's Municipal Code clearly defines aesthetic objectives and operates to further those objectives without unnecessarily burdening federal interests.²⁹ Therefore, Steilacoom's Municipal Code³⁰ meets both prongs of the Commission's standard for reasonableness under Section 25.104(a).

13. We further note that insofar as Steilacoom's restrictions may apply to satellite antennas that are used for video and are one meter or smaller, the OTARD rule applies. The OTARD rule provides that restrictions necessary for preservation of a designed historic district are permissible under specified circumstances, as described above.³¹ Therefore, it is generally unnecessary for a restricting entity to obtain a waiver to enforce such a restriction. As long as Steilacoom applies its restrictions to satellite antennas one meter or smaller in diameter in compliance with the historic preservation provisions of the OTARD rule, no waiver is necessary.³²

²⁶ *SMC*, at 2.14.010.

²⁷ The Commission has stated that restrictions designed to preserve genuine historic districts may justify a waiver of its rules depending upon the circumstances and on how other types of antenna or modern accoutrements are treated. See *Preemption Order*, 11 FCC Rcd at 5819, and 47 C.F.R. §1.1307(a)(4), regarding Commission's actions with respect to licensing of facilities that may affect districts significant in American history or listed in the National Register of Historic Places.

²⁸ *Preemption Order*, 11 FCC Rcd at 5819.

²⁹ 47 C.F.R. § 25.104(a).

³⁰ *SMC* § 18.22.090, Design Requirements; and § 2.14.040, Steilacoom Preservation and Review Board.

³¹ 47 C.F.R. § 1.4000(b)(2) and (3).

³² 47 C.F.R. § 1.4000(b).

IV. CONCLUSION

14. For the reasons discussed above, we grant Steilacoom's request for waiver of §25.104(b)(1) of the Commission's rules governing certain restrictions on certain satellite earth station antennas.

V. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to Sections 0.261 and 25.104 of the Commissions rules, 47 C.F.R. § 0.261 and § 25.104, that the Petition for Waiver filed by the Town of Steilacoom, Washington, File No.SAT-WVZ-19991228-00126, is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau